

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ERIC J. HANSEN and JESSE J. WILLIAMS

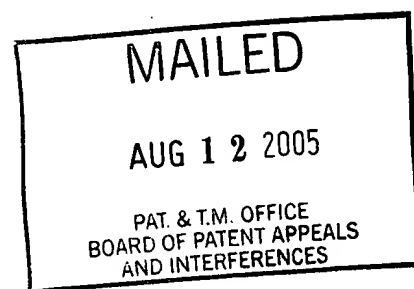
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Appeal No. 2005-1053  
Application No. 09/589,973

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ON BRIEF

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Before GARRIS, DELMENDO, and PAWLIKOWSKI, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal which involves claims 1-28.

The subject matter on appeal relates to a method for cleaning an upholstery or carpet surface with a cleaning solution containing an oxidizing agent. Further details of this appealed subject matter are set forth in representative independent claim 1 which reads as follows:

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1. A method for cleaning an upholstery or carpet surface in which a fluid carpet or upholstery cleaning solution is dispensed onto the upholstery or carpet surface to be cleaned and the cleaning solution is recovered from the surface with suction, comprising the steps of:

admixing an oxidizing agent with the cleaning solution prior to the step of dispensing the cleaning solution onto the upholstery or carpet surface.

The references set forth below are relied upon by the examiner as evidence of obviousness:

Sham	5,386,612	Feb. 7, 1995
Ligman	5,555,595	Sep. 17, 1996
Miracle et al. (Miracle)	5,576,282	Nov. 19, 1996

All of the claims on appeal are rejected under 35 U.S.C. § 103(a) as being unpatentable over Miracle in view of Ligman or Sham.<sup>1</sup>

Rather than reiterate the respective position advocated by the appellants and by the examiner, we refer to the brief and reply brief and to the answer for a complete exposition thereof.

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<sup>1</sup> As indicated on page 5 of the brief and on page 2 of the reply brief, the appealed claims are separately grouped. Therefore, to the extent that the separately grouped claims likewise have been separately argued, we will individually consider such claims in our assessment of the rejection before us. See former regulation 37 CFR § 1.192(c)(7)(2003) and compare current regulation 37 CFR § 41.37(c)(1)(vii)(September 13, 2004). Also see Ex parte Schier, 21 USPQ2d 1016, 1018 (Bd. Pat. App. & Int. 1991).

OPINION

For the reasons expressed in the answer and below, we will sustain the examiner's section 103 rejection of claims 1-7, 9, 10, 12, 13, 15, 16, 19, 20 and 22-28. However, the section 103 rejection of claims 8, 11, 14, 17, 18 and 21 cannot be sustained as fully explained hereinafter.

Miracle discloses a cleaning solution containing an oxidizing agent to be used for a variety of cleaning purposes including as a cleaning shampoo for carpets (e.g., see lines 19-46 in column 11). The sole independent claim on appeal distinguishes from Miracle by requiring a method for cleaning an upholstery or carpet surface wherein the cleaning solution is dispensed onto the surface to be cleaned and is recovered from the surface with suction.<sup>2</sup> In this regard, the appellants acknowledge that the prior art includes upholstery or carpet cleaning machines wherein cleaning solution is dispensed onto the surface to be cleaned and is recovered from the surface with suction (e.g., see pages 1 and 2 of the subject specification),

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<sup>2</sup> Contrary to the appellants' belief, the admixing step of independent claim 1 does not patentably distinguish over Miracle since this claimed step encompasses admixing the oxidizing agent and cleaning solution at a manufacturing facility as envisioned by patentee. Stated otherwise, claim 1 does not require the admixing step to be performed at the point of use as the appellants seem to believe.

and the examiner's applied references to Ligman and Sham evince this state of the prior art. According to the examiner, it would have been prima facie obvious for one with ordinary skill in the art to effect the carpet shampooing method envisioned by Miracle via carpet cleaning machines of the type taught by Ligman or Sham. We agree.

The appellants present a variety of nonobviousness arguments concerning the above discussed combination of prior art teachings proposed by the examiner. These arguments are unpersuasive for the reasons detailed in the answer.

For example, the appellants argue that Miracle's disclosure is nonenabling with respect to carpet shampoos and concomitantly that the heavy detergents taught by patentee to be useful in laundry washing machines would be unsatisfactory as carpet shampoos. In support of this argument, the appellants refer to the declaration of record under 37 CFR § 1.132 by Jesse J. Williams. However, the appellants' argument and the Williams declaration are both unpersuasive of patentability because they are inappropriately focused on Miracle's laundry detergent embodiment rather than on the reference teaching as a whole. Regarding this point, we emphasize that, in discussing the components of his cleaning compositions and the uses thereof, for

example, as carpet shampoos, Miracle expressly teaches that "[t]he precise nature of these additional components, and levels of incorporation thereof, would depend on . . . the nature of the cleaning operation for which it to be used" (column 11, lines 27-30). In light of this express teaching which the appellants in their brief and Williams in his declaration have both ignored, we are convinced that one having an ordinary level of skill in this art would have been able to formulate the compositions of Miracle as an effective carpet shampoo for use in carpet cleaning machines.

With respect to separately grouped claims 7, 9, 13, 15 and 19 as well as with respect to separately grouped claims 10, 16 and 20, the appellants additionally argue that the applied prior art contains no teaching or suggestion of the temperature and/or time limitations recited in these claims. The examiner has properly indicated, however, that heating temperatures and times were known in the prior art to be result effective variables as evinced by the heating disclosures of Ligman and Sham. As a consequence, we share the examiner's conclusion that it would have been prima facie obvious for an artisan to develop workable heating temperatures and times of the type recited in the claims under review. See In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d

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1934, 1936-37 (Fed. Cir. 1990); In re Boesch, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980); In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

As for separately grouped claims 23-27, the appellants argue that the applied prior art contains no disclosure concerning the claim requirement for a cleaning solution which includes an anionic and/or non-ionic surfactant, an anti-soiling agent and an organic solvent (see page 13 of the brief). We cannot agree. Like the examiner, we consider Miracle's teaching in general including his teaching of conventional adjuncts in particular to evince that a cleaning solution having the aforementioned ingredients would have been prima facie obvious to one having an ordinary of level of skill in this art.

In light of the foregoing, and for the reasons expressed in the answer, it is our determination that the reference evidence adduced by the examiner establishes a prima facie case of obviousness with respect to claims 1-7, 9, 10, 12, 13, 15, 16, 19, 20 and 22-28.

We reach a different determination with respect to claims 8, 11, 14, 17, 18 and 21.

We agree with the appellants that the applied prior art contains no teaching or suggestion of the feature recited in

separately argued claims 8, 14 and 18 wherein "the admixture is mixed with heated air to heat the admixture and further comprising the step of heating the air before the step of mixing with [sic, the] admixture with heated air." The examiner's obviousness conclusion regarding these claims (see page 13 of the answer) is simply without evidentiary support. We are constrained, therefore, to reverse the examiner's section 103 rejection of claims 8, 14 and 18 as being unpatentable over Miracle in view of Ligman or Sham.<sup>3</sup>

Similarly, the references applied by the examiner contain no teaching or suggestion of "the step of heating the cleaning solution before the admixing step to heat the admixture" as recited in separately grouped claims 11, 17 and 21. Apparently in reference to these claims, the examiner states "the order of mixing will not be given patentable weight in the absence of showing superior or unexpected results" (answer, page 13). This wholly inappropriate statement is directly contrary to long

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<sup>3</sup> On page 27 of the specification, the appellants describe the heated air feature of these claims via incorporation by reference to U.S. Patent No. 5,500,977 to McAllise et al. Upon return of this application to the jurisdiction of the Examining Corps, the examiner and the appellants should consider and resolve whether the claims under consideration patentably distinguish over the combined teachings of Miracle and the McAllise et al. patent (e.g., see Figures 8B and 11A, the paragraph bridging columns 8 and 9 as well as lines 11-26 in column 12).

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established legal precedents. See, for example, In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970) (all words in a claim must be considered in judging the patentability of that claim against the prior art). Under these circumstances, we again are compelled to hereby reverse the examiner's section 103 rejection vis-à-vis claims 11, 17 and 21 as being unpatentable over Miracle in view of Ligman or Sham.

Finally, on page 11 of the brief, the appellants present the following argument that any prima facie case of obviousness established by the examiner is overcome by their proffered showing of commercial success:

The claimed invention in this application has achieved commercial success as shown by the Declaration of Kelli Cain, an employee of BISSEL Homecare, Inc., assignee of the present application. In her Declaration, Ms. Cain attests to the commercial success of the invention. The commercial success has been achieved not only through sales by Applicants' Assignee but also by sales of Oxiclean whose product has been used in carpet cleaning machines according to the claimed invention.

The Cain declaration utterly fails to establish commercial success in relation to the appellants' claimed method. The declaration contains no evidence that the here claimed method resulted in market share growth and no evidence of a nexus between the sales referred to by declarant and the merits of the appealed independent claim 1 method. See Kansas Jack, Inc. v.



Kuhn, 719 F.2d 1144, 1151, 219 USPQ 857, 861 (Fed. Cir. 1983).

It is appropriate to emphasize that, for commercial success to have true relevance to the issue of nonobviousness, the success must be shown to have been due to the nature of the claimed invention rather than to unrelated commercial and economic factors. See Cable Elec. Prods. v. Genmark, Inc., 770 F.2d 1015, 1027, 226 USPQ 881, 888 (Fed Cir. 1985). Here, the Cain declaration does not evince that the sales activity referred to therein was due to the nature of the claimed invention. To the contrary, this declaration evinces that the sales activity was due to economic and commercial factors such as advertising, marketing and promotional activities.

In this latter regard, page 2 of the declaration reflects a decrease rather than increase of the relatively modest sales activity for the little-advertised BISSELL BOOSTER oxidizing composition which is said to be relevant to the here claimed method. At item 9 on declaration pages 2-3, this decrease in sales activity is explained as follows:

9. Although BISSELL Homecare enjoyed some relatively early success in selling the BISSELL BOOSTER oxidizing composition, it was later curtailed because of the introduction of new commercial bleaching composition[s] that were advertised for use in extraction cleaning machines as well as for other uses. These other commercial bleaching compositions were far more highly advertised than the BISSELL BOOSTER

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oxidizing composition and accordingly were given shelf space in mass merchandising outlets whereas the BISSELL BOOSTER oxidizing composition was not given shelf space in the mass merchandisers in view of the commercial bleaching compositions that were advertised for other purposes [emphasis added].

This explanation clearly evinces that it is advertising, not the merits of the appellants' claimed method, which was responsible for the sales activity subsequently discussed in the Cain declaration. In our view, this circumstance reinforces rather than overcomes the examiner's prima facie case of obviousness. That is, if the here claimed method as represented by sales of the BISSELL BOOSTER oxidizing composition were truly nonobvious vis-à-vis an exceptional invention, the already modest sales of this composition would not have decreased merely because the other compositions of competitors were more highly advertised.

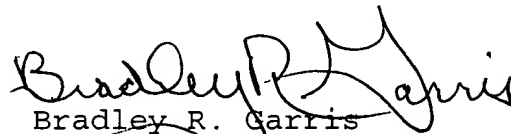
The foregoing circumstances lead us to the ultimate determination that all the evidence of record before us weighs most heavily in favor of an obviousness conclusion (i.e. relative to the claims for which a prima facie case has been established). It follows that we hereby sustain the examiner's section 103 rejection of claims 1-7, 9, 10, 12, 13, 15, 16, 19, 20 and 22-28 as being unpatentable over Miracle in view of Ligman or Sham.

The decision of the examiner is affirmed-in-part.

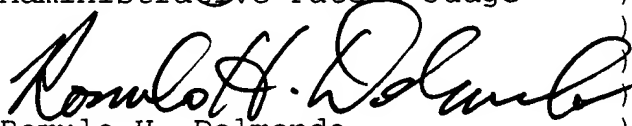
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No time period for taking any subsequent action in  
connection with this appeal may be extended under 37 CFR  
§ 1.136(a).

AFFIRMED




Bradley R. Garris )  
Administrative Patent Judge )



Romulo H. Delmendo )  
Administrative Patent Judge )

BOARD OF PATENT  
APPEALS AND  
INTERFERENCES



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